

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:

Arlene Blair

Debtor.

NOTICE OF MOTION FOR
TERMINATION OF AUTOMATIC STAY

Case No.: 18-10292-cgm
(Chapter 13)

Assigned to:
Hon. Cecelia G. Morris
Bankruptcy Judge

Please take notice that RLF Mortgage Corporation, a secured creditor of Debtor, by the undersigned attorneys, will move this Court on September 22, 2022 at 11:00 AM or as soon thereafter as counsel can be heard, at www.ZoomGov.com for an Order pursuant to 11 U.S.C. §362(d)(1) and 11 U.S.C. §1322(b)(5) terminating the automatic stay as to movant's interest in real property commonly known as 4023 Dereimer Avenue, Bronx, NY 10466 and pursuant to 11 U.S.C. §1301(c), the Secured Creditor hereby respectfully requests relief from co-debtor stay as expressed in 11 U.S.C. §1301(a) to the extent it applies to the co-obligor, and for such other relief as the Court may deem proper.

In the event that this motion is scheduled to be heard beyond the time-period set forth in 11 U.S.C. Section 362(e) or is subsequently adjourned beyond said time period, Secured Creditor hereby waives its rights under 11 U.S.C. Section 362(e) and agrees to be bound by the Order of the Court on the instant Motion.

DATED: August 25, 2022
Williamsville, New York

Yours,

By: /s/ Courtney R Shed
Courtney R Shed, Esq.
GROSS POLOWY, LLC
Attorneys for Secured Creditor
RLF Mortgage Corporation
1775 Wehrle Drive, Suite 100
Williamsville, NY 14221
Telephone (716) 204-1700

TO:

Arlene Blair
1325 E 233rd St
Bronx, NY 10466-3327

Debtor

Errol Blair
4023 Dereimer Avenue
Bronx, NY 10466

Co-Debtor

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Carl J. Nelson Law, PC
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Attorney for Debtor

Krista M. Preuss
Chapter 13 Standing Trustee
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Chapter 13 Trustee

United States Trustee
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Attorney for Creditor

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

AFFIRMATION

In Re:
Arlene Blair
Debtor.

Case No.: 18-10292-cgm
(Chapter 13)

Assigned to:
Hon Cecelia G. Morris
Bankruptcy Judge

I, Courtney R Shed, Esq. am an attorney duly licensed to practice law in the Courts of this State and in the United States Bankruptcy Court for the Southern District of New York and hereby state as follows:

1. I submit the within Affirmation under penalty of perjury in support of the motion of RLF Mortgage Corporation ("Secured Creditor"), a Secured Creditor of the above-referenced Debtor, to terminate the automatic stay in this case with respect to the real property commonly known as 4023 Dereimer Avenue, Bronx, NY 10466.

2. Secured Creditor is the holder of a note executed by Errol Blair and Arlene Blair on or about the 16th day of February, 2005 in the principal amount of \$48,750.00 and interest (the "Note"), secured by a mortgage bearing even date therewith, which is recorded in the Office of the Bronx County Clerk on the 16th day of March, 2005 in CRFN # 2005000154519 of Mortgages (the "Mortgage") covering the premises commonly known as 4023 Dereimer Avenue, Bronx, NY 10466 (the "Mortgaged Premises"). A copy of the Note, Mortgage, and Assignments of Mortgage is annexed hereto as **Exhibit 'A'**.

3. On the 4th day of February, 2018 Debtor Arlene Blair filed a Petition under Chapter 13 of Title 11 U.S.C. §101 et seq with this Court, and an Order for relief was duly entered.

4. The Note and Mortgage provide that the Debtor will be in default if they do not make full monthly payments on each due date. As of August 22, 2022, the Debtor is due for 9 payments in the amount of \$409.92 each for the months of December 1, 2021 to August 1, 2022 and has not cured said default. Furthermore, 1 payment due on September 1, 2022 will be due at the date this motion is heard. A Motion for Relief from Stay Worksheet is attached hereto as **Exhibit 'B'**.

5. As of August 22, 2022 there is a total indebtedness on the Note and Mortgage in the sum of \$13,857.75. Interest on the unpaid principal balance will continue to accrue, and to protect its security in the Mortgaged Premises Secured Creditor may be required to make advances for property taxes, insurance and related matters.

6. Based on the Debtor's Schedules attached hereto as **Exhibit 'C'**, said real property is valued at \$616,000.00.

7. There exists a co-obligor named Errol Blair on the underlying obligation to the Secured Creditor. Pursuant to 11 U.S.C. §1301(c), the Secured Creditor hereby respectfully requests relief from co-debtor stay as expressed in 11 U.S.C. §1301(a) to the extent it applies to the co-obligor. In support of said request, it is respectfully submitted that the co-obligor received consideration for the claim held by the secured creditor at least in the form of money loaned by the Secured Creditor. Furthermore, it is respectfully submitted that the continuation of the co-debtor stay would irreparably harm the Secured Creditor in the absence of post-petition mortgage payments.

8. Section 362(d)(1) of the Bankruptcy Code provides in pertinent part that the Court shall grant relief from the stay imposed by Section 362(a) "for cause, including lack of adequate protection of an interest in property..." As set forth above, "cause" exists to vacate the automatic stay as the Debtor has failed to make monthly post-petition mortgage payments to Secured Creditor. Under Section 362(d)(1), failure to make post-petition mortgage payments constitutes "cause" to modify the automatic stay. See, In re Taylor, 151 B.R. 646 (E.D.N.Y. 1993); In re Davis, 64 B.R. 358, 359 (Bankr. S.D.N.Y. 1986); In re Frascatore, 33 B.R. 687 (B. Ct. E.D. Pa. 1983).

9. A Memorandum of Law is submitted herewith.
10. A copy of a proposed Order granting the relief sought by Secured Creditor is annexed hereto as **Exhibit 'D'**.
11. In the event that this motion is scheduled to be heard beyond the time-period set forth in 11 U.S.C. Section 362(e) or is subsequently adjourned beyond said time period, Secured Creditor hereby waives its rights under 11 U.S.C. Section 362(e) and agrees to be bound by the Order of the Court on the instant Motion.
12. A Rule 55 Affidavit is annexed hereto as **Exhibit 'E'**.
13. No prior application has been made for the relief requested herein.

WHEREFORE, Secured Creditor respectfully requests that an Order be granted terminating the automatic stay immediately as to Secured Creditor's interest in the Mortgaged Premises together with such other, further and different relief as the Court may deem just in this matter.

DATED: August 25, 2022
Williamsville, New York

Yours,

By: /s/ Courtney R Shed
Courtney R Shed, Esq.
GROSS POLOWY, LLC
Attorneys for Secured Creditor
RLF Mortgage Corporation
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